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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/773,757

02/06/2004

A. Carleton Elliot

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EXAMINER

NGUYEN, CHI Q

ART UNIT

PAPER NUMBER

3635

NOTIFICATION DATE

DELIVERY MODE

05/18/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
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## Office Action Summary

Application No.

10/773,757

Applicant(s)

ELLIOT ET AL.

Examiner

Chi Q. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 9-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/12/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121.

I. Claims 1-8, drawn to a subcombination of a compression post, classified in class 248.

II. Claims 9-17, drawn to a combination of a shear wall and a compression post, classified in class 52, subclass 481.1.

The inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combination (MPEP 806©). In the instant case, the combination as claimed does not require the particular of the subcombination as claimed because a shear wall would be used anchoring structures for attaching a shear wall onto a foundation and securing to wall studs.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purpose as indicated is proper.

During a telephone conversation with Mr. Jerry Sewell on 5/7/2007 a provisional election was made without traverse to prosecute the invention of group I, claims 1-8. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-17 withdrawn from further consideration by the examiner as being drawn to a nonelected invention.

### ***Claim Objections***

Claims 1-8 are objected to because of the following informalities: independent claim 1, the language between the preamble and the body of the claim is inconsistent. For example, the preamble claim 1 sets forth a subcombination of a compression post but in a body of claim cites "a plate mounted to a lower end of an end post of a shear wall" thus sets forth a positive relationship between the plate of the compression post

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and an end post of the shear wall that appears to be a combination. Since applicant elected a subcombination of a compression post (see above restrictions) therefore the claims are treated as subcombination of a compression post.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,480,819 to Lopez.

Claim 1:

Lopez discloses an attachable device comprising a plate 52 capable of mounting to a lower end of an end post of a shear wall, the plate having dimensions selected to conform to the lower end of the end post, and an extended portion 65 positioned generally perpendicular to the plate, the extended portion having at least one dimension selected capable to fit through a hole in a mudsill of the shear wall and having a length elected to conform with a thickness of the mudsill such that when the shear wall is mounted on the structural support, forces applied to the end post are communicated via the plate and the extended portion to the structural support. Again, as noted above (see objections) the relation with an end post is not given patentable weight because the applicant elected a subcombination of a compression post.

Claim 2:

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Wherein the extended portion is secured to the plate.

Claim 3:

Wherein the extended portion 65 is secured to the plate 52 by at least one weld (see col. 3, line 4).

Claim 4:

Wherein the extended portion 65 is secured to the plate by press fitting an end of the extended portion into a recess 62 in the plate (Fig. 5).

Claim 5:

Wherein one of the extended portion 65 is threaded 63, the plate 52 includes a threaded aperture or bore 62 (col. 3, lines 3-7), and the threaded end of the extended portion 63 is engageable with the threaded bore to secure the extended portion to the plate (Fig. 5).

Claim 6:

Further comprising an end cap 3 on at least one of the extended portion, the end cap having a bore 72 there through, a threaded bore in the plate 52, and a bolt 70 sized to extend through the bore of the end cap, the bolt having a threaded end engageable with the threaded bore in the plate to secure the extended portion to the plate (see Figs. 3, 5, and 6).

Claim 7:

Wherein the extended portion 65 and the plate 52 comprise an unitary body (see Fig. 5). Note that a term "cast" is considered as a method of forming a device and is not

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germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

Claim 8:

Wherein the extended portion 65 is cylindrical and the at least one dimension is an outside diameter.

Claims 1-2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 3,552,698 to Kinney.

Claim 1:

Kinney discloses an anchor and support comprising a plate 10 capable of mounting to a lower end of an end post of a shear wall, the plate having dimensions selected to conform to the lower end of the end post, and an extended portion 14 positioned generally perpendicular to the plate, the extended portion having at least one dimension selected to fit through a hole in a mudsill of the shear wall and having a length elected to conform with a thickness of the mudsill such that when the shear wall is mounted on the structural support, forces applied to the end post are communicated via the plate and the extended portion to the structural support.

Claim 2:

Wherein the extended portion is secured to the plate.

Claim 4:

Wherein the extended portion 14 is secured to the plate by press fitting an end of the extended portion into a recess 12 in the plate (Fig. 2).

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### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (571) 272-6847. The examiner can normally be reached on Monday-Friday from 7:30 am-4:00 pm.

If attempt to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached at (571) 272-6842.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairedirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197.

CN  
CQN  
5/8/2007

*Carl Friedman*  
Assistant  
Examiner  
5/14/07